

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ERIC E. EVENSON, DENNIS R.
SPRAYBERRY and SHANE A.
LEMMONS,

Plaintiff,

vs.

OZZIE KNEZOVICH,

Defendant.

NO. CV-08-288-JPH

ORDER ADOPTING REPORT AND
RECOMMENDATION, DENYING CLASS
CERTIFICATION, DENYING MOTION FOR
APPOINTMENT OF COUNSEL AND
SEVERING COMPLAINT

BEFORE THE COURT is Magistrate Judge Hutton's Report and Recommendation to deny class certification, to deny Plaintiffs' Motion for Appointment of Counsel, and to sever the complaint (Ct. Rec. 10). Only Plaintiff Eric E. Evenson has filed an Objection to these recommendations (Ct. Rec. 11). Mail sent to Plaintiff Shane Lemmons at the Spokane County Jail and the Benton County Jail has been returned with the notations that he is not in custody at either jail (Ct. Recs. 12 and 13).

In his "Objection," Mr. Evenson asserts he has valid mental issues that prevent him from "fairly and adequately" appearing or acting on his own behalf. He claims he is harmed "by the way the Spokane County Jail is running things." He does not provide specifics. Rather, he asks the court to reconsider his motions.

1 To the extent Mr. Evenson is asserting claims arising after this
2 action was filed on September 15, 2008, he is free to file a separate
3 action once he has exhausted his administrative remedies. The court
4 will not permit Mr. Evenson to assert claims in this action which
5 occurred after September 15, 2008, by persons who were not named as a
6 Defendant to this lawsuit.

7 After review of the record and Mr. Evenson's objections, and for
8 the reasons set forth by the Magistrate Judge, **IT IS ORDERED** the
9 Report and Recommendation (Ct. Rec. 10) is **ADOPTED in its entirety**.
10 Therefore, **IT IS ORDERED** the Motions for Class Certification (Ct. Rec.
11 4) and for Appointment of Counsel (Ct. Rec. 5) are **DENIED**.

12 SEVERANCE

13 Plaintiffs Eric E. Evenson, Dennis R. Sprayberry and Shane A.
14 Lemmons are inmates proceeding *pro se* with this civil rights action
15 pursuant to 42 U.S.C. § 1983. This court has determined that each
16 Plaintiff should proceed separately on his own claim. The Federal
17 Rules of Civil Procedure provide as follows:

18 Parties may be dropped or added by order of the court on
19 motion of any party or of its own initiative at any stage of
20 the action and on such terms as are just. Any claim against
a party may be severed and proceeded with separately.

21 Fed. R. Civ. P. 21. Courts have broad discretion regarding severance.
22 See *Davis v. Mason County*, 927 F.2d 1473, 1479 (9th Cir.) cert.
23 denied, 502 U.S. 899 (1991).

24 In this action, Plaintiffs are individuals who filed this action
25 while in the custody of the Spokane County Jail. In this court's
26 experience, an action brought by multiple inmate plaintiffs proceeding
27 *pro se* presents procedural problems that cause delay and confusion.

1 Delay often arises from the frequent transfer of inmates to other
2 facilities or institutions, the changes in address that occur when
3 inmates are released to parole, and the difficulties faced by inmates
4 who attempt to communicate with each other and with unincarcerated
5 individuals. At this time, Plaintiff Shane Lemmons has been
6 transferred at least two times and has not provided a forwarding
7 address. Plaintiff Dennis R. Sprayberry has filed nothing further in
8 this action.

9 Furthermore, it is unclear whether the Prison Litigation Reform
10 Act of 1995 permits multi-plaintiff actions or requires full payment
11 of the filing fee from each inmate in the case of a jointly-filed
12 complaint. *Compare Hubbard v. Haley*, 262 F.3d 1194, 1197-98 (11th Cir.
13 2001)(no multi-plaintiff actions and each inmate must pay the full
14 amount of the filing fee), *cert . denied*, 534 U.S. 1136 (2002) *with In*
15 *re Prison Litigation Reform Act*, 105 F.3d 1131, 1138 (6th Cir.
16 1997)("any fees and costs that the district court . . . may impose
17 shall be equally divided among all the prisoners"); *Burke v. Helman*,
18 208 F.R.D. 246 (C.D. Ill. 2002) (each inmate not required to pay
19 entire filing fee in multi-plaintiff action).

20 For the sake of administrative ease, the court will order that
21 each Plaintiff's claim be severed from the claims of the others.
22 Plaintiff Eric E. Evenson will proceed in this action, while
23 Plaintiffs Dennis R. Sprayberry and Shane A. Lemmons will each proceed
24 in a separate civil action to be opened by the District Court
25 Executive. Each Plaintiff will proceed with his own action and will
26 be solely responsible for his own action and his own filing fee.
27

1 The District Court Executive will be directed to assign each new
2 action to the same judicial officer assigned to the instant action.
3 The District Court Executive shall make appropriate adjustment in the
4 assignment of civil cases to compensate for this reassignment.

5 Accordingly, **IT IS ORDERED:**

- 6 1. The claims of Plaintiffs Dennis R. Sprayberry and Shane A.
7 Lemmons are severed from the claims of Plaintiff Eric E.
8 Evenson;
- 9 2. Plaintiff Eric E. Evenson shall proceed as the sole
10 Plaintiff in case No. CV-08-288-JPH; and
- 11 3. The District Court Executive is directed to:
 - 12 a. Open a separate civil actions for Plaintiffs Dennis R.
13 Sprayberry and Shane A. Lemmons;
 - 14 b. Assign each action to the judicial officer to whom the
15 instant case is assigned and make appropriate
16 adjustment in the assignment of civil cases to
17 compensate for such assignment;
 - 18 c. Place a copy of this order, the complaint and the
19 appropriate application to proceed *in forma pauperis* by
20 a prisoner, in each file opened for Plaintiffs Dennis
21 R. Sprayberry and Shane A. Lemmons;
 - 22 d. Strike from the caption of each Plaintiff's complaint
23 all Plaintiffs' names except the name of the individual
24 Plaintiff proceeding in the action;
 - 25 e. Send each Plaintiff an endorsed copy of his complaint
26 bearing the amended caption and the case number
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1 assigned to his own individual action; and

2 f. Forward each newly created file and this file to the
3 assigned judicial officer for further screening and
4 assessment of the filing fee for each Plaintiff.

5 **IT IS SO ORDERED.** The District Court Executive shall enter this
6 Order and forward copies to Plaintiffs Eric E. Evenson, Dennis R.
7 Sprayberry and Shane A. Lemmons.

8 **DATED** this 17th day of November, 2008.

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10 ***s/Lonny R. Suko***

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LONNY R. SUKO
12 UNITED STATES DISTRICT JUDGE
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